

**UNITED STATES DEPARTMENT OF LABOR  
BOARD OF ALIEN LABOR CERTIFICATION APPEALS  
800 K STREET, N.W.  
WASHINGTON, D.C. 20001**

DATE: 02/05/97

CASE NO. 95-INA-95

In the Matter of:

PEAK TIME TRAVEL AND TOUR INC.  
Employer

on behalf of

PERVEZ KHALID  
Alien

Before: Holmes, Neusner and Vittone  
Administrative Law Judges

**DECISION AND ORDER**

***Per Curiam*** This case arises from the Employer's request for review of the denial by a U.S. Department of Labor Certifying Officer ("CO") of alien labor certification. The certification of aliens for permanent employment is governed by section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(5)(A), and Title 20, Part 656 of the Code of Federal Regulations ("C.F.R."). Unless otherwise noted, all regulations cited in this decision are in Title 20.

Under §212(a)(14) of the Act, as amended, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and Attorney General that, at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available; and (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. Part 656 have been met. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in

order to make a good faith test of U.S. worker availability.

We base our decision on the record upon which the CO denied certification and the employer's request for review, as contained in the appeal file ("AF"), and any written arguments. 20 C.F.R. §656.27(c).

### **Statement of the Case**

On July 12, 1993, Peak Time Travel and Tour Inc. ("Employer") filed an application for labor certification to enable Pervez Khalid ("Alien") to fill the position as manager of a travel agency (AF 9). The job duties for the position, as stated on the application, are as follows:

The alien shall work as office Manager to deal with our clients and customers who can speak only Hindu, Urdu and Punjabi & Arabic. He will also contact the Indian, Pakistani and Bangladeshi (sic) Govt agencies as well as private businesses to get business for the company. He will also arrange and operate tours to India, Pakistan and Bangladesh (sic) and make hotel reservations for such participants.

(AF 9).

The stated job requirements for the position are as follows: a B.A. or B.S. degree; two years of experience in the job offered; and "(m)ust be fluent in Hindu, Punjabi, Arabic and Urdu and also have some understanding of Bangale [sic] and Gujratee." (AF 9).

In a Notice of Findings ("NOF") issued on April 28, 1994, the CO proposed to deny certification on the grounds that the "job opportunity contains a foreign language requirement which has not been supported by evidence of business necessity as required by Section 656.21(b)(2)." (AF 60-62).

The Employer submitted its rebuttal on or about May 16, 1994 (AF 63-72). The CO found the rebuttal unpersuasive and issued a Final Determination on May 27, 1994, denying certification (AF 73-75).

On June 14, 1994, the Employer appealed the denial of certification (AF 76-87), and subsequently the CO forwarded this matter to the Board of Alien Labor Certification Appeals for review.

### **Discussion**

Section 656.21(b)(2)(I)(C) provides that the job opportunity shall not include a requirement for a language other than English unless that requirement is adequately documented as arising from business necessity.

The business standard of Information Industries, 88-INA-82 (Feb. 9, 1989)(en banc) is applicable to a foreign language requirement. See Coker's Pedigreed Seed Co., 88-INA-48 (Apr. 19, 1989)(en banc). As the Information Industries standard has developed, the first prong generally involves whether the employer's business includes clients, co-workers or contractors who speak a foreign language, and what percentage of the employer's business involves this foreign language. The second prong generally focuses on whether the employee's job duties require communicating or reading in a foreign language.

In the Notice of Findings, the CO directed the Employer to submit evidence that the foreign language requirement arises from business necessity and is not simply a matter of the Employer's convenience. Specifically, the CO directed the Employer to document the following:

1. The total number of clients/people he deals with and the percentage of those people he deals with who cannot communicate in English.
2. The percentage of his business that is dependent upon the language.
3. How absence of each of the languages would adversely impact business.
4. The percentage of time worker would use each of the languages.
5. Describe how employer has dealt with and handled Hindi, Punjabi, Arabic, Urdu, Bangale [sic] and Gujratee speaking clients previously or is currently handling this segment of his business.
6. Describe services provided by employer to other ethnic groups and how the language problem is handled.
7. Any other documentation which will clearly show that fluency in Hindi, Punjabi, Arabic, Urdu and understanding of Bangale [sic] and Gujratee is essential to employer's business.

(AF 61).

The Employer's rebuttal consists of a cover letter by its attorney (AF 71-72) and an Affidavit by its President, Mohammad Z. Siddique, dated May 16, 1994 (AF 70). In summary, the Employer's President stated the following: 99% of his clients speak Punjabi, Urdu, Hindu, Bengali, Gujratee and Arabic; although he had personally handled these clients, due to other business and community activities, he can no longer do so; "the worker shall devote full time to deal with these clients such as 70% with Punjabi-speaking clients, 20% with Urdu-speaking clients, 5% with Hindu-speaking clients, 2% with Bangali-speaking [sic] clients, 1% with Arabic-speaking clients and the remaining 1% with English-speaking clients;" the requirement of these foreign languages is a business necessity and not simply his convenience; and "without a manager

who has complete knowledge of these languages I shall lose my business." (AF 70).

In the Final Determination, the CO noted that the Employer's rebuttal and affidavit stated the percentages of his business in which the various foreign languages are used, while specifying that he had previously handled the foreign language speaking clients. "However, employer failed to document the total number of clients/people he deals with and the percentage of those people he deals with who cannot communicate in English." Finally, the CO concluded:

Employer failed to adequately document how the lack of each of the languages would adversely impact business and failed to document business necessity for six languages. Employer's affidavit (#5) states "That without a manager who has complete knowledge of these languages I would lose my business." Employer fails to document why six languages are necessary and crucial for the existence of his business.

Employer expresses a requirement for six languages, however employer fails to adequately document the business necessity for this requirement.

The case is denied.

(AF 73). We agree.

Upon review, we find that the Employer failed to submit documentation reasonably requested by the CO. Employer's failure to produce such documentation clearly warrants the denial of labor certification. See, e.g., Remington Products, Inc., 89-INA-173 (Jan. 9, 1991)(en banc); Dixon & Parcels Associates, Inc., 93-INA-213 (Oct. 25, 1994); Edward Gerry, 93-INA-467 (June 13, 1994); The Foot Works, 93-INA-464 (Nov. 30, 1994); The Dwight School, 93-INA-58 (Apr. 13, 1995).

Finally, even assuming that none of the 99% of the Employer's foreign-language speaking clients can communicate in English, this does not establish the business necessity for all six foreign languages required. Even if we assume that the percentages of the foreign languages used correspond to the volume of business generated in each of the foreign languages, the Employer has, at most, provided a rationale for the business necessity of the Punjabi (70%) and, possibly, the Urdu (20%) foreign languages.<sup>1</sup> However, with respect to the other foreign languages, such

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<sup>1</sup> Despite the CO's request to do so, the Employer failed to document the percentage of his business that is dependent upon each of the languages and to provide detailed information regarding how the absence of each of the languages would adversely impact business. Accordingly, our supposition that, for example, that 70% usage of the Punjabi languages corresponds to 70% of the Employer's business is somewhat speculative. This, again, demonstrates why it is imperative for the Employer to provide documentation reasonably requested by the CO, and why failure to do so warrants a denial of certification.

as Hindi (5%), Bengali (2%), Arabic (1%), and Gujratee (1% or less), the percentage of clients who speak each of these languages is clearly too small to establish business necessity. See, e.g., Felician College, 87-INA-553 (May 12, 1989)(en banc)(10% and 4% insufficient for Spanish and Tagalog language requirements); Best Roofing Co., Inc., 88-INA-125 (Dec. 20, 1988)(12.5% of Farsi-speaking client base insufficient); Washington International Consulting Group, 87-INA-625 (June 3, 1988)(Spanish not necessity where 23% of client base was affected by the requirement); cf. Mr. Isak Sakai, 90-INA-330 (Oct. 31, 1991)(20 to 30% of business dependent on use of Farsi is significant).

In view of the foregoing, we find that labor certification was properly denied.

### **ORDER**

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

Entered at the direction of the panel

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Todd R. Smyth  
Secretary to the Board of  
Alien Labor Certification Appeals

Judge Holmes Concurring:

While I agree with the majority that the CO had full authority to deny labor certification based on the unnecessary language requirements, I believe the Employer made a reasonable effort to explain the business necessity of the languages required. A better approach by the CO would have been to request re-advertisement which stated that Punjabi language was required with some knowledge of Urdu, and a statement that Hindu, Bengali or Arabic would be desirable.

**NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW:** This Decision and Order will become the final decision of the Secretary unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

**Chief Docket Clerk  
Office of Administrative Law Judges  
Board of Alien Labor Certification Appeals**

**800 K Street, N.W., Suite 400  
Washington, D.C. 20001-8002**

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced typewritten pages. Responses, if any, shall be filed within 10 days of the service of the petition, and shall not exceed five double-spaced typewritten pages. Upon the granting of the petition the Board may order briefs.